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California Redwood Company and Simpson Timber
Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JASON GRAY, on behalf of himself and
others similarly situated,

Plaintiff,

v.

CALIFORNIA REDWOOD COMPANY;
SIMPSON TIMBER COMPANY; and
DOES 1 to 50, Inclusive,

Defendants.

Case No. CV 07-05589 CRB

**JOINT INITIAL CASE MANAGEMENT
CONFERENCE STATEMENT**

DATE: February 15, 2008
TIME: 9:00 a.m.
CRTM: 8

I

JURISDICTION AND SERVICE

This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act (“CAFA”), which provides, in relevant part, “[t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs, and is a class action in which—(A) any member of a class of plaintiffs is a citizen of a State different from any defendant” As set out in Defendants’ Notice of Removal herein, Plaintiffs’ claims, if taken as true (for this purpose only) and aggregated together, exceed \$5,000,000.00. Moreover, there is minimal diversity of citizenship among the parties and no Defendant is a citizen of California.

No issues exist as to personal jurisdiction or venue. All parties have been served. By agreement of the parties, California Redwood Company has been substituted as a Defendant in place and stead of Green Diamond Resource Company, and stands in its shoes.

II

FACTS/LEGAL ISSUES

The original Complaint was filed on October 1, 2007. Thereafter, a First Amended Complaint was filed. Plaintiff Jason Gray, on behalf of himself and purportedly on behalf of a class of employees who worked for Defendant from four years prior to the filing of the action to the present, is represented by Kingsley & Kingsley, APC, by Eric B. Kingsley. Plaintiff alleges causes of action for failure to provide meal breaks or

1 compensation in lieu thereof, waiting time penalties pursuant to California Labor Code
2 section 203, penalties pursuant to Labor Code section 2699, and violation of Business and
3 Professions Code Section 17200.
4

5 Labor Code section 512 requires that all employees who work a shift in excess of
6 five (5) hours be given a thirty (30) minute unpaid meal break. For each meal break that
7 was not provided to employees of Defendant, an additional hour of pay may be imposed
8 to be paid to that employee pursuant to Labor Code section 226.7. Plaintiff contends
9 Defendant did not comply with the provision. Defendant denies this contention.
10

11 In addition, Labor Code section 203 provides for additional potential penalties for
12 those employees who are no longer working for Defendants, if the wages that were
13 required to be paid were willfully withheld. Plaintiff contends that waiting time penalties
14 pursuant to Labor Code section 203 are justified. Defendant contends that it paid all
15 former employees all wages due to them under applicable law, and that, even if it failed in
16 any respect to do so, such failure was not willful, so that no section 203 penalties are
17 appropriate. Labor Code section 2699, the Labor Code Private Attorneys General Act
18 (“PAGA”), provides plaintiffs with a private right of action to recover certain civil
19 penalties that could otherwise be collected by the state. Plaintiff contends that such
20 penalties are appropriately assessed for Plaintiff's aforementioned causes of action, and
21 Plaintiff seeks to recover such penalties under the PAGA.
22
23
24

25 Additionally, Plaintiff has alleged a cause of action under Business and Professions
26 Code section 17200, in that Plaintiff alleges that the conduct of Defendants would be
27 considered unfair competition.
28

1 Defendant disputes these allegations, and contends that it provided its employees
2 with meal breaks in accord with California law. As such, no premium wage would be
3 owed to its employees, and Defendant would not be liable for penalties to any employee
4 or former employee, or to the state.

5
6 Defendant further contends that this action is not suitable to class determination, in
7 that each individual employee's claim not to have been provided a meal break would
8 require an individualized fact inquiry and would depend on unique circumstances.
9

10 III

11 ANTICIPATED MOTIONS/CLASS CERTIFICATION

12 Plaintiff will bring a motion for class certification, after additional discovery is
13 conducted (see below for proposed briefing schedule of the certification motion).
14

15 Defendants anticipate bringing a motion for summary judgment or summary
16 adjudication of issues.

17 IV

18 AMENDMENT OF PLEADINGS

19
20 The parties propose a deadline of March 31, 2008, for amendment of the pleadings.

21 V

22 EVIDENCE PRESERVATION

23 Promptly upon learning of this action, Defendant issued instructions to its managers
24 and other relevant personnel to preserve relevant work time records, as well as other
25 related and relevant records and documents, throughout the purported class period,
26 whether in electronic or physical form.
27
28

VI

DISCLOSURES

All necessary disclosures will be made by February 15, 2008, as agreed by the parties.

VII

DISCOVERY/CLASS ISSUES

In the next few months, the parties will be conducting written discovery. Plaintiff intends to take the deposition of Defendant's person most knowledgeable regarding meal breaks. Plaintiff does not wish to limit discovery mechanisms prior to its motion for class certification, but the parties have agreed that pre-certification discovery will be limited to certification issues, and merit-based discovery will be deferred until after hearing on the certification motion.

The parties propose the following deadlines:

- Plaintiff's class certification motion shall be filed by August 1, 2008;
- Defendants' opposition to the class certification motion shall be filed by October 24, 2008;
- Plaintiff's reply brief shall be filed by November 14, 2008;
- The Court will hear the certification motion on a date convenient to the Court's calendar in December 2008.

VIII

RELATED CASES

The parties are unaware of any related cases.

IX**RELIEF SOUGHT**

Plaintiff seeks compensatory damages in the amount of Plaintiff's and each class member's hourly wage for each meal period missed or taken late from at least four (4) years prior to the filing of this action to the present as may be proven, penalties pursuant to Labor Code section 203 for all employees who were terminated or resigned equal to their daily wage times thirty (30) days.

Plaintiff also seeks an award of prejudgment and post judgment interest, an order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from not providing Plaintiffs with proper breaks pursuant to Labor Code sections 226.7 and 512, and IWC Wage Order 6-2001, an award of penalties and other relief pursuant to Labor Code section 2699, restitution for unfair competition pursuant to Business and Professions Code section 17200, including disgorgement or profits, costs of suit, and attorneys' fees.

After discovery regarding pay rates and the number of class members, Plaintiff will be in a better position to calculate damages to the Plaintiff and the putative class.

X**SETTLEMENT AND ADR**

The parties are amenable for an ADR process to be completed within 180 days, as the Court has ordered. The parties agree to submit to private mediation.

XI

MAGISTRATE JUDGE

The parties do not consent to the utilization of a magistrate judge.

XII

OTHER REFERENCES

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

XIII

NARROWING OF ISSUES

The parties are unable to narrow issues at this time.

XIV

EXPEDITED SCHEDULE

This type of case cannot be handled on an expedited basis.

XV

SCHEDULING/TRIAL

As noted above in Section VII, the parties propose the following deadlines:

- Plaintiff's class certification motion shall be filed by August 1, 2008;
- Defendants' opposition to the class certification motion shall be filed by October 24, 2008;
- Plaintiff's reply brief shall be filed by November 14, 2008;
- The Court will hear the certification motion on a date convenient to the Court's calendar in December 2008.

1 financial interest in the subject matter in controversy or in a party to the proceeding, or
 2 any other kind of interest that could be substantially affected by the outcome of the
 3 proceeding.
 4

5 Pursuant to Civil Local Rule 3-16, Defendant certifies that the following listed
 6 persons, associations of persons, firms, partnerships, corporations (including parent
 7 corporations) or other entities (i) have a financial interest in the subject matter in
 8 controversy or in a party to the proceeding, or (ii) have a non-financial interest in that
 9 subject matter or in a party that could be substantially affected by the outcome of this
 10 proceeding:
 11

12 Green Diamond Resource Company; Simpson Timber Company; and California
 13 Redwood Company.
 14

15 XVII

16 **OTHER MATTERS THAT MAY FACILITATE THE JUST, SPEEDY AND** 17 **INEXPENSIVE DISPOSITION OF THIS MATTER** 18

19 The parties are unaware of such matters at this time.

20 **KINGSLEY & KINGSLEY, APC**

21 DATED: _____, 2008

22 By: _____
 23 Eric B. Kingsley
 Attorneys for Plaintiff

24 DATED: _____, 2008

25 **PERKINS COIE LLP**

26 By: _____
 27 Steven C. Gonzalez
 Attorneys for Defendants
 California Redwood Company and
 Simpson Timber Company
 28